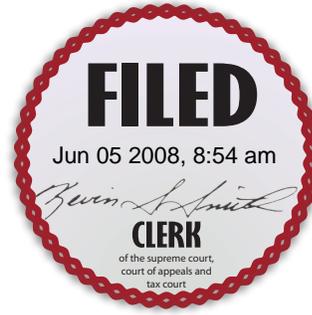


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEY FOR APPELLEE:

MARK SMALL
Indianapolis, Indiana

ELLEN N. MARTIN
Greene County Department
of Child Services
Bloomfield, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF D.D.S., a Minor Child,)
and D.T., his Mother,)

D.T.,)
Appellant-Respondent,)

vs.)

GREENE COUNTY DEPARTMENT)
OF CHILD SERVICES,)

Appellee-Petitioner.)

No. 28A01-0802-JV-83

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-0709-JT-5

June 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

D.T. (“Mother”) appeals the termination of her parental rights as to her son, D.D.S.

We affirm.

ISSUE

Whether there was clear and convincing evidence to support the termination of Mother’s parental rights.

FACTS

D.D.S. was born to Mother and D.S. (“Father”)¹ on February 20, 1999. In July of 2005, the Greene County Office of Family and Children (the “OFC”) received a report of drugs being used in the home where D.D.S. resided with Mother and his maternal grandmother, V.D.² On July 25, 2005, Susan Neal, a family case manager with the OFC, and Greene County Sheriff’s Deputy Aaron Smith went to the home to investigate the report. V.D. submitted to a urine test, which came back positive for marijuana. Mother, who was not home during the OFC’s visit, tested positive for cocaine and marijuana on July 29, 2005.

On August 1, 2005, the OFC filed a petition, alleging D.D.S. to be a child in need of services (“CHINS”) pursuant to Indiana Code section 31-34-1-1.³ On August 2, 2005,

¹ The juvenile court also terminated Father’s parental rights, but he is not part of this appeal.

² Father was incapacitated due to an accident and resided in a nursing facility.

³ Indiana Code section 31-34-1-1 provides as follows:

Mother admitted the allegations of the CHINS petition. The juvenile court determined D.D.S. to be a CHINS, ordered D.D.S. to be placed with his paternal grandparents, and set a dispositional hearing for September 12, 2005.

The day of the CHINS hearing, Mother participated in a drug and alcohol assessment, after which it was recommended “that she participate in inpatient [sic] due to her drug use.” (Tr. 311). Mother, however, refused to participate in inpatient therapy. Mother again tested positive for cocaine on September 10, 2005.

Following the dispositional hearing, the juvenile court ordered Mother to “receive individual therapy on a basis as recommended by her therapist and . . . follow all recommendations made by that therapist”; check into the Greene County Rehabilitation Center within seven days of the dispositional hearing; “complete residential drug therapy at the Greene County Rehabilitation Center”; “submit to periodic and unannounced drug screens as requested by the [OFC]”; participate in and complete a minimum of twelve parenting classes; and report any change of address, telephone number, employment or “household situation” to the OFC within “one day of that change.” (OFC’s App. 9-10). The juvenile court also ordered supervised visitation with D.D.S. after the completion of two clean drug tests and compliance with the recommended treatment.

A child is a child in need of services if before the child becomes eighteen (18) years of age:

(1) the child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and

(2) the child needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

Mother checked into the Greene County Rehabilitation Center on September 28, 2005. Mother then transferred to Hamilton Center, where she completed her inpatient therapy.

Due to Mother's compliance with the case plan, D.D.S. returned to Mother's care on March 31, 2006 for a trial home visit. The juvenile court, however, ordered continued services for Mother. Following a review hearing, the juvenile court dismissed the CHINS case on June 15, 2006.

Approximately six weeks later, however, the OFC received a report that Mother was using cocaine again. On July 28, 2006, Neal and Deputy Brad Stille went to Mother's residence to investigate the report. Neal left after no one responded to several knocks. Subsequently, Deputy Stille discovered Mother as she was leaving the residence. When Mother arrived at Neal's office, Mother "was incoherent," and "it was very obvious at that time she was displaying signs of cocaine use" (Tr. 315-16). Mother, however, could not complete the urine test because "she had urinated in her pants" (Tr. 316). Mother then admitted to using cocaine.

The OFC again placed D.D.S. with his paternal grandparents and filed a CHINS petition on July 31, 2006. Mother admitted the allegations of the CHINS petition, and the juvenile court found D.D.S. to be a CHINS.

Following a dispositional hearing on September 5, 2006, the juvenile court ordered Mother to receive and participate in both individual therapy and family therapy. The juvenile court also ordered Mother to complete a minimum of twelve parenting classes and submit to weekly drug tests.

Mother tested positive for cocaine on the 21st, 29th, and 30th of September and the 3rd of October of 2006. Mother maintained only “sporadic contact” with the OFC, reported that she was living in a tent, and did not participate in the court ordered services. (Tr. 318).

Due to Mother’s failure to comply with the juvenile court’s dispositional order, the juvenile court conducted a hearing on November 13, 2006. The juvenile court again ordered Mother to “receive individual therapy from Ireland Home Based Services”; “participate in family therapy provided by Ireland Home Based Services”; “complete Intensive Home based Therapy provided by Ireland Home Based Services”; “submit to three drug screens weekly”; “participate in home-based parenting education”; and ordered no contact or visitation with D.D.S. “until further notice” (OFC’s App. 25-26).

Mother married W.T. (“Stepfather”) in November of 2006. The juvenile court ordered Stepfather, as a member of Mother’s household, to participate in the same services as Mother, including therapy and drug tests.

Mother and Stepfather generally complied with the case plan. Mother, however, failed to attend a review hearing in December of 2006; also in December, Stepfather tested positive for alcohol.

In February of 2007, the juvenile court reduced the required drug tests from three times a week to twice a week. Mother obtained employment in June of 2007.

In April and May of 2007, Mother cancelled several appointments with her therapist and visitation with D.D.S. Stepfather ceased participating in the case plan in July of 2007.

On September 1, 2007, Owen County Sheriff's Deputy Clint Wampler was dispatched to the scene of vehicular accident, where he encountered Mother. Deputy Wampler "could smell the odor of an alcoholic beverage on [Mother]," and Mother's "speech was slurred." (Tr. 21). A breath test revealed Mother's blood-alcohol content to be .12%. Mother falsely reported that her vehicle had been stolen. Subsequently, Mother was convicted of public intoxication and false reporting of a crime. Soon after her arrest, Mother lost her job.

On September 5, 2007, the OFC filed a petition to terminate the parental rights of Mother and Father. The juvenile court commenced a two-day hearing on November 28, 2007.

During the hearing, Julie Miller, Mother's therapist through Ireland Home Based Services, testified that Mother's contact with her prior to the November 13, 2006 hearing was sporadic. Mother explained to Miller that she had not contacted her service providers because "she had decided to sign over guardianship" of D.D.S. (Tr. 32). Miller testified that Mother and Stepfather cancelled several sessions in April and May of 2007. Miller also testified that in June of 2007, Mother "had voiced concern at that time about [Stepfather's] drinking" (Tr. 46).

Miller testified that in June of 2007, Mother began working at a gas station, and she and Stepfather had moved into a trailer located in Poland, Indiana. Mother also

began attending classes at Ivy Tech. Miller testified that Mother's visitation with D.D.S. was going well and was to increase in June. Mother, however, had two "no shows during the month of June." (Tr. 50).

Miller testified that in July, Mother and Stepfather "began talking about separating or getting a divorce." (Tr. 51). It was at this time that Stepfather "stopped participating" in services—including the required drug tests—although he "was still in and out of the home[.]" (Tr. 52).

Miller testified that after Mother's arrest in September of 2007, Mother "lost her job, she did not return to school," and "she had no income, no support and no ability to pay her bills." (Tr. 63). Miller further testified that after Mother's arrest in September, "there were actually 3 different reports" of Mother drinking alcohol. (Tr. 70).

Although Mother had been allowed intermittent visitation with D.D.S.—where Mother was allowed unsupervised visits at a predetermined location and someone periodically would check on Mother and D.D.S.—these visits ceased after Mother's arrest. Mother's visits with D.D.S. "were reduced to once a week and were . . . bumped up to a therapeutic supervised visit." (Tr. 73).

Miller testified that approximately two weeks after Mother's arrest, Mother "acknowledge[d] that . . . she was not able at that time to take care of [D.D.S.] and felt like he was better off with" with his grandparents. (Tr. 69). Miller opined that Mother could not take care of D.D.S. and that it would be in the best interest of D.D.S. to terminate Mother's parental rights.

Neal testified that Mother “began having issues with cancellations in April and May” of 2007. (Tr. 330). According to Neal, Mother cancelled four visits with D.D.S. and missed appointments for home-based services. Neal further testified that after August of 2007, Mother “had quit participating in drug screens on a regular basis,” including a drug screen scheduled for the week prior to the termination hearing. (Tr. 348).

Neal also testified that Stepfather failed to comply with services. Neal testified that Mother informed her that Stepfather “had gotten up to the point where he was actually drinking between 18 and 20 beers a day.” (Tr. 354). Mother, however, did not end her relationship with Stepfather.

Neal testified that the OFC felt it to be in the best interest of D.D.S. to terminate Mother’s parental rights and that D.D.S. “deserves a stable environment” and permanency. (Tr. 357). In Neal’s opinion, Mother could not provide a stable environment for D.D.S. Elaine Hubbard, D.D.S.’s therapist, testified that D.D.S. often expressed concern regarding whether Mother could take care of him.

Shirley Hughes, the current court-appointed special advocate (“CASA”) for D.D.S., testified that she did not believe Mother could provide a permanent and stable environment for D.D.S. and that it would be in D.D.S.’s best interest to terminate Mother’s parental rights. Jackie Harding, the previous CASA for D.D.S., testified that she felt it would be in the best interest of D.D.S. for Mother’s parental rights to be terminated. Both Hughes and Harding recommended that D.D.S. be placed with his paternal grandparents.

On December 21, 2007, the juvenile court ordered the termination of Mother's parental rights. The juvenile court found, in pertinent part, as follows:

4. The circumstances that led to the detention of [D.D.S.] in . . . both CHINS cases involved allegations of cocaine use by [Mother]. In both cases the allegations were substantiated.

* * *

8. From September 26, 2006 through November 13, 2006, there was little contact and minimal participation in services by [Mother]. [Mother] was living in a tent and did not have employment. She also tested positive for cocaine on several occasions. She cancelled or did not appear for scheduled services. Visitation with [D.D.S.] was also suspended during this time. Due to this non-compliance, a Petition for Parental Participation was filed by the [OFC]. . . . [Mother] was reordered to participate in individual therapy, intensive therapy to address substance abuse issues, to participate in three drug screens weekly, to have no contact with [D.D.S.] until recommended by [the OFC] and after two clean screens in the same week and compliance with services, and parenting education.

9. [Mother] informed the [OFC] that she had married [Stepfather]. The [d]ispositional report was amended to include him in services since he was a household member and he was ordered to participate in services

10. At the December 11, 2006 Review Hearing, [Mother] did not appear. The Court determined that she had not complied with the case plan, that she had not visited with [D.D.S.], she had not enhanced her ability to fulfill her parental obligation, and had not cooperated with the [OFC]. Also, the Court determined that the causes for the child's out of home placement had not been alleviated, services offered . . . had been ineffective, and that continued placement of the child outside of the home of the parent is necessary and in the best interest of the child.

* * *

12. A Review Hearing was held on March 12, 2007, at this time [Mother] and [Stepfather] were compliant with services

13. During April and May 2007, [Mother] and her husband became non-compliant with ordered services. During this period many therapy sessions and visitations were cancelled. A case conference was held on May 16,

2007 and the lack of appropriate housing and income were discussed as well as the lack of compliance with services

14. In June 2007 . . . [Mother] started discussing her concerns about her husband's excessive alcohol use and other concerns over her marriage. [Mother] also obtained employment on June 25, 2007.

15. A Review Hearing was held June 25, 2007 and the Court determined that [Mother] had inconsistently complied with the case plan, had sporadically cooperated with the [OFC], that services offered . . . had been ineffective and that continued placement of the child outside of the home of the parent was necessary and in the best interest of [D.D.S.]

16. At a case conference on July 19, 2007, [Mother] announced that her husband would no longer be participating in services. . . . Neal explained to her that he needed to be involved and continue with services or that she should have no contact with him in order for reunification to occur

* * *

18. In August 2007, Mother and her husband filed for divorce, however, [Stepfather] moved his camper onto the property of the residence and would be continually present inside the residence

* * *

22. On September 2 [sic], 2007, [Mother] was arrested in Owen County for public intoxication and false reporting of a crime. She was convicted of both charges. She was administered a breathalyzer which resulted in a .120 BAC. [Mother] lost her job as a result.

* * *

24. During intermittent visitation there were instances of [Stepfather] being present

25. In late September, due to arising issues, Elaine Hubbard, therapist to [D.D.S.] recommended that visitation be changed to once weekly and to become therapeutically supervised. . . . After the visitation changed, [Mother] cancelled appointments.

26. At the October 1, 2007 Review Hearing, the Court determined that [Mother] had not complied with the case plan, she had not enhanced her

ability to fulfill her parental obligation, she had not cooperated with the [OFC], that services offered in an effort to reunify the family had been ineffective and that continued placement of the child outside of the home was necessary and in the child's best interest. The permanency plan was changed to termination of parental rights.

* * *

28. There has been lack of compliance with completing drug screens in the past several months. Drug use was the reason for the original involvement by the [OFC]. . . . [Mother] missed drug screens on September 5, September 8, September 18, September 28, October 1, October 9, October 12, October 27, November 4, November 9, and November 17, 2007.

* * *

30. . . . [D.D.S.] has stated on numerous occasions that he wants to remain living with his grandparents and would like to visit his mother.

31. The [OFC] has made reasonable efforts to reunify this family by offering numerous and continual services The [OFC] has given [Mother] adequate time to participate and make progress in services. [D.D.S.] has been a ward of the [OFC] for a majority of time since July 2005. Permanency is essential for [D.D.S.] after so much time.

* * *

34. . . . Through the duration of the two CHINS proceedings, [Mother] has developed a pattern of being able to be compliant with services for a short period and then stops fully complying with services or goes back to cocaine use. After the first CHINS Cause was dismissed, there was only a six week period before the [OFC] became re-involved. In both Causes, it took several months for [Mother] to become compliant with services. In the current CHINS she was compliant with services from December 2006 through March 2007, and then compliance dropped off with canceling sessions, not attending drug screens, and by lying to the case managers and providers. [Mother] has not been compliant with services since [M]arch 2007.

35. Termination of the parental rights of [Mother] . . . is in the best interest of [D.D.S.] for the reasons enumerated above and so that this child may be able to soon achieve a permanent and stable living environment.

(Mother's App. 8-13). The juvenile court then concluded that "[t]here is a reasonable probability that the conditions that led to the child's removal or reasons for placement outside of the parents [sic] home will not be remedied and that the continuation of the parent-child relationship poses a threat to the well being of the child." (Mother's App. 13).

DECISION

Mother asserts that the trial court erred in terminating her parental rights. Although parental rights are of a constitutional dimension, the law allows for termination of these rights when parties are unable or unwilling to meet their responsibility. *In re A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). The purpose of termination of parental rights is not to punish parents but to protect children. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *cert. denied*, 534 U.S. 1161 (2002). When a county office of family and children seeks to terminate parental rights, the office must plead and prove in relevant part that:

- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). These allegations must be established by clear and convincing evidence. *A.N.J.*, 690 N.E.2d at 720.

In reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence most

favorable to the judgment. *Id.* In deference to the trial court's unique position to assess the evidence, we will set aside a judgment terminating a parent-child relationship only if it is clearly erroneous. *L.S.*, 717 N.E.2d at 208.

Mother asserts that the State failed to establish that the conditions resulting in the removal of D.D.S. will not be remedied and that a continuation of her parent-child relationship with D.D.S. poses a threat to his well-being. The trial court need only find either that the conditions resulting in the child's removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child. *In re C.C.*, 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), *trans. denied*.

In determining whether the conditions will not be remedied, the trial court "first should determine what conditions led the State to place the child outside the home and with foster care, and second whether there is a reasonable probability that those conditions will be remedied." *Id.* The juvenile court should judge a parent's fitness to care for the child as of the time of the termination hearing and take into account any evidence of changed conditions. *In re D.J.*, 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). "The trial court must also evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." *Id.* "A court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment." *McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). The trial court also may consider the services offered to the parent and the parent's response to those services. *D.J.*, 755 N.E.2d at 684.

In this case, the OFC removed D.D.S. from Mother's care in July of 2005 due to Mother's drug use. The OFC offered, and Mother took advantage of, several services. The juvenile court ordered Mother to submit to weekly drug tests; Mother tested positive for cocaine in September of 2005.

Subsequently, Mother maintained sobriety for approximately nine months, leading the OFC to place D.D.S. back into Mother's care. Six weeks later, however, Mother relapsed, and the OFC again removed D.D.S. from Mother's care due to Mother's drug use. Mother then tested positive for cocaine several times in September and October of 2006. Mother also failed to comply with services, resulting in a parental-participation order, which increased Mother's required drug tests from two per week to three per week.

In November of 2006, Mother married Stepfather, and he was ordered to participate in services and take weekly drug tests. Mother and Stepfather mostly complied with the juvenile court's order until the spring of 2007, when Mother missed several visits with D.D.S. and cancelled several therapy sessions. Stepfather ceased participating in services in July 2007. Despite Stepfather's failure to comply with the juvenile court's order, Mother continued her relationship with Stepfather.

In September of 2007, Mother was arrested for public intoxication and false reporting; counselors reported that Mother continued drinking. At this time, Mother also "had quit participating in drug screens on a regular basis" (Tr. 348).

In this case, the record reflects that D.D.S. was twice removed from Mother's care for cocaine use. The record also reveals that Mother tested positive for cocaine on several occasions following the second CHINS case; abused alcohol; failed to fully

participate in services; and missed several court-ordered drug tests. Furthermore, the record shows that Mother continued a relationship with Stepfather despite Stepfather's non-compliance with the court-ordered case plan. Given the ample evidence that the conditions resulting in D.D.S.'s removal will not be remedied, we find no error in terminating Mother's parental rights.⁴

Affirmed.

NAJAM, J., and BROWN, J., concur.

⁴ Again, the juvenile court must find the reasonable probability that the conditions, which resulted in the removal of the child, would not be remedied, or that the continuation of the parent-child relationship posed a threat to the well-being of the child. I.C. § 31-35-2-4(b)(2)(B) (emphasis added). Because we have found that the evidence supports the trial court's findings as to the former, we need not address Mother's contention that the OFC failed to prove the latter. *A.N.J.*, 690 N.E.2d at 721 n.2.